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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/921,096	07/31/2001	Kevin P. Headings	108.0009-00000	6782

22882 7590 08/11/2006

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EXAMINER

VAN HANDEL, MICHAEL P

ART UNIT	PAPER NUMBER
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2623

DATE MAILED: 08/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/921,096

Applicant(s)

HEADINGS ET AL.

Examiner

Michael Van Handel

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

1. This action is responsive to an Amendment filed 6/15/2006. Claims 1-39 are pending. Claims 1, 8, 15, 22, and 29 are amended.

### ***Response to Arguments***

1. Applicant's arguments filed 6/15/2006 regarding claims 1, 8, 15, 22, and 29 have been fully considered, but they are not persuasive.

Regarding claims 1, 8, 15, 22, and 29, the applicant argues that Payton does not teach refreshing a content database based on a predetermined interval of time having a programmed begin date and a programmed end date. The examiner respectfully disagrees. The examiner acknowledges the applicant's argument that Payton teaches refreshing a local server based on whether new subscriber profile data or billing data exists; however, Payton also teaches refreshing the local server based on a predetermined interval of time. Payton discloses a scheduling processor 46 that periodically receives an updated list 44 of recommended items for each subscriber from a collaborative filter 42. The scheduling processor transmits the changes in the lists to the subscribers and merges new additions to the list into a refresh queue (col. 6, l. 63-67 & col. 7, l. 1-6). The examiner notes that Payton discloses this updating as occurring periodically, that is, at regular time intervals. Payton also discloses that this off-peak prediction and refresh is suitably performed once a day, thus providing subscribers with a long enough period of time to download all of the recommended items (col. 7, l. 8-12). Payton further

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discloses that each server's predictive filter 54 updates its list 44 of recommended items in response to a local periodic refresh via the backchannel 30. In response to the periodic trigger, the local server 28 determines whether new subscriber profile data or billing data exists. If new data exists, the prediction filter sends the new profile and billing data back to the distribution server 24 and receives newly recommended items from the server 24 (col. 7, l. 61-67 & col. 8, l. 1-5). Again, the examiner notes that Payton discloses this updating as occurring periodically and therefore at regular intervals of time. Payton still further discloses that the local server for each subscriber replaces those items, which are no longer on his or her recommended list with the newly broadcast items (col. 3, l. 15-17; col. 6, l. 1-9; & col. 8, l. 26-36). Thus, the examiner maintains that Payton meets the limitation of providing "a group of consumers access to the video content stored therein for a predetermined interval of time having a programmed begin date and a programmed end date" as currently claimed.

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims **1-4, 6-11, 13-18, 20-25, 27-33, 35, 37-39** are rejected under 35 U.S.C. 102(b) as being anticipated by Payton.

Referring to claims **1, 8, 15, 22, and 29**, Payton discloses a system/method for distributing digital video content, the system comprising:

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- a sending processor 24 operable to deliver video content over a network to at least one storage location (col. 5, l. 55-57 & Fig. 8); and
- a receiving processor 176 at each storage location operable to receive the video content from said sending processor and refresh a content database 56 (local storage) based on the video content received (col. 6, l. 1-7), said content database adapted to provide a group of consumers access to the video content stored therein for a predetermined interval of time having a programmed begin date and a programmed end date (Payton discloses a list that determines which items will be added to or deleted from the local storage and that the list of recommended items is updated periodically)(col. 3, l. 15-17; col. 6, l. 1-9, 63-67; col. 7, l. 1-12, 61-67; col. 8, l. 1-10, 26-36; col. 9, l. 62-67; & col. 10, l. 1-16).

Referring to claims **2, 9, and 16**, Payton discloses the system of claims 1, 8, and 15, respectively, wherein said receiving processor is operable to refresh said content database based on criteria associated with the consumers (col. 8, l. 50-67; col. 9, l. 1-13; & Figs. 6, 7a, 7b).

Referring to claims **3, 4, 10, 11, 17, 18, 23-25, 32-33, and 37**, Payton discloses the systems of claims 2, 3, 9, 10, 16, 22, 23, and 29, respectively, wherein the criteria associated with the consumers includes the content usage by the consumers, and wherein the content usage includes the viewing and listening habits of each consumer (col. 4, l. 57-58 & col. 8, l. 38-49).

Referring to claims **6, 7, 13, 14, 20, 21, 27, and 28**, Payton discloses the systems of claims 1, 6, 9, 13, 15, 20, 22, and 27, respectively, wherein said receiving processor is operable to refresh said content database based on one or more contractual obligations associated with the

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content, and wherein one of the contractual obligations includes a price charged for media content access (col. 7, l. 65-67 & col. 8, l. 1-5).

Referring to claim **30**, Payton discloses the system of claim 29, wherein said receiving processor is programmed to offer each consumer an extension of time before purging the media content (the examiner notes that items are added and deleted from storage according to a level of priority that is determined by user interaction with the item. Therefore, by interacting with a particular item more often, the period of time that the item is stored is extended.)(col. 8, l. 26-37).

Referring to claims **31** and **35**, Payton discloses the system of claim 29, wherein said receiving processor is programmed for secured access to media content and to decrypt media content that is encrypted (col. 4, l. 64-66).

Referring to claim **38**, Payton discloses the system of claim 29, wherein the media content includes media content selected by one of the consumers (col. 6, l. 7-11).

Referring to claim **39**, Payton discloses the system of claim 29, wherein said receiving processor and database are located proximate a visual display accessible by one of the consumers (col. 6, l. 20-23).

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims **5, 12, 19, 26, 34** are rejected under 35 U.S.C. 103(a) as being unpatentable over Payton in view of Eldering et al.

Referring to claims **5, 12, 19, 26, and 34**, Payton discloses the systems of claims 3, 10, 15, 23, and 29, respectively. Payton does not disclose that the content usage includes an amount of time each consumer views the content. Eldering et al. discloses a system for characterizing subscribers, wherein the time duration of a user's viewing is monitored. It would have been obvious to one of ordinary skill in the art at the time that the invention was made to modify Payton to include monitoring a user's viewing time such as that taught by Eldering et al. in order to better provide subscribers with programming and advertising which will be of interest to them (col. 1, l. 64-66).

5. Claim **36** is rejected under 35 U.S.C. 103(a) as being unpatentable over Payton.

Referring to claim **36**, Payton discloses the system of claim 29. Payton further discloses a CD ROM writer 65, which writes a digital audio signal onto a blank CD ROM, which can then be played on a separate audio system. Payton does not disclose preventing unauthorized copying of the media content. The examiner takes Official Notice that preventing the copying of media data is well known within the prior art. It would have been obvious to one of ordinary skill in the art at the time that the invention was made to modify Payton to prevent copying of media data such as that taught by the prior art in order to ensure that media providers are properly compensated for distributing media.

*Conclusion*

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Van Handel whose telephone number is 571.272.5968. The examiner can normally be reached on Monday-Friday, 8:00am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Grant can be reached on 571.272.7294. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.




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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Michael Van Handel  
Examiner  
Art Unit 2623

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